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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/736,456	12/14/2000	Paul M. Hunt	6550-000050	9265

7590 05/17/2007  
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EXAMINER
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TRAN, HAI V

ART UNIT	PAPER NUMBER
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2623

MAIL DATE	DELIVERY MODE
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05/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/736,456		HUNT ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Hai Tran		2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-85 is/are pending in the application.
- 4a) Of the above claim(s) 1-40, 64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-63 and 65-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/29/2007 has been entered.

### ***Response to Arguments***

Applicant's arguments filed 12/05/2006 have been fully considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 41-61 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern (US 6486892) in view of Gerace (US 5848396 and further in view of Eldering et al. (US 6820277).

Claim 41, Stern (Col. 7, lines 35-60) discloses a system for controlling content delivery to an audience using a concurrent delivery system that delivers content to at least a 1<sup>st</sup> portion of the audience over a channel-tuned broadcast spectrum (non-web related information) and to at least a second portion of the audience over an addressable network using an Internet protocol (Web related information). Stern further discloses the content delivery system (Fig. 1, el. 8) has access to a plurality of content elements 10-13. Stern further discloses the content delivery system being controlled by the audience interaction monitor system and being operative to automatically select content elements in real time and actively deliver selected content elements to the 1<sup>st</sup> and 2<sup>nd</sup> portions of the audience based at least one audience metric (dynamically update user profile so to deliver information up-to-date; Col. 3, lines 45-57; Col. 9, lines 15-Col. 10, lines 14) by adjusting , in an identical and uniform manner, content elements of webcast content delivered over the addressable network for a plurality of recipients of the webcast content, and content elements of broadcast content delivered over the channel-tuned broadcast spectrum for all recipient of the broadcast content (Col. 9, lines 35-46), thereby assuring that, for all content elements that are adjustable in response to the individual audience metric (individual user profile), the recipients of the webcast content and the broadcast content receive identical content elements.

Stern does not disclose an aggregate (gather) audience interaction monitor system that monitors the addressable network (Internet network) and generate at least one audience metric corresponding to aggregate (gather) usage by plural persons within the 2<sup>nd</sup> portion of the audience (Web users) and the content delivery system being deliver selected content elements to the 1<sup>st</sup> and 2<sup>nd</sup> portions of the audience based on the at least one audience metric. Stern further does not clearly discloses content elements are programming and advertising content elements.

Gerace discloses an audience interaction monitor system (Fig. 2) that monitors the addressable network (Internet network) and generate at least one audience metric corresponding to aggregate (gather) usage by plural persons within the 2<sup>nd</sup> portion of the audience (Web users) and the content delivery system being controlled by the audience interaction monitor system and being operative to actively deliver selected content elements (programming and advertising content elements) to the 1<sup>st</sup> and 2<sup>nd</sup> portions of the audience based on the at least one audience metric (Col. 2, lines 45-53; Col. 4, lines 1-36; Col. 5, lines 25-40; Col. 11, lines 45-Col. 12, lines 42). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Stern with Gerace so to provide to user agate information combined in a common screen view or separately in respective screen view with advertisements in accordance with the psychographics profile of user.

Stern in view of Gerace does not disclose that programming and advertising content elements of both webcast content and of broadcast content are adjustable in

an identical manner in response the audience metric, i.e., for all members of a broadcast audience and all members of a narrowcast audience.

Eldering teaches the subscriber characteristics/data may be associated with individual subscribers or groups of subscribers, i.e., audience metric in term of demographics, geographic locations, household income, and ethnic group... (Col. 4, lines 33-Col. 5, lines 45) so that programming and advertising content elements can be easily matched in an identical manner to individual subscribers or groups of subscribers (Col.9, lines 13-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Stern in view of Gerace with the teaching of grouping of subscribers into a large groups with similar characteristics, as taught by Eldering, so to provide advertisers an ability to describe their advertisements in term of target market demographics and to allow ads to be matched to groups of subscribers in the streaming video environments (see Col. 2, Summary of the invention).

Claim 42, Gerace further discloses wherein the audience monitor stores historical data reflecting the usage by the 2<sup>nd</sup> portion of the audience (Internet audience; Fig. 2, el. 73; Col. 4, lines 37-47).

Claim 43, "wherein the audience metric is an audience level metric characterizing the aggregate of the 1<sup>st</sup> portion of the audience" is further met by Gerace because Gerace ' s the format of the media schedule page also includes

one table for television listing for each TV program for user to select for viewing (Col. 10, lines 12-18). Thus, the audience metric disclosed by Gerace is also applicable to an audience level metric characterizing the aggregate of the 1<sup>st</sup> portion of the audience (Non-Internet audience). Moreover, Eldering also discloses various audience level metrics for a particular advertisement (see Fig. 7-8).

Claim 44, since the audience metrics disclosed by Gerace and Eldering are also applicable to an audience level metric characterizing the aggregate of the 1<sup>st</sup> portion of the audience; therefore, Gerace and Eldering's audience metrics are also a surrogate metric characterizing the aggregate of the 2<sup>nd</sup> portion of the audience (Internet audience).

Claim 45, Gerace (Col. 2, lines 35-59 and Col. 15, lines 1-45) and Eldering (see Fig. 7-8) further discloses wherein the audience metric is a gain/loss metric characterizing change in usage by the 2<sup>nd</sup> portion of the audience

Claim 46, Gerace (Col. 15, lines 1-25) and Eldering (see Fig. 7-8) further discloses wherein the audience metric reflects usage as a function of time

Claim 47, Gerace (Col. 15, lines 1-25) and Eldering (see Fig. 7-8) further discloses wherein the audience metric reflects usage associated with at least one content element.

Claim 48, Gerace (Col. 15, lines 25-45) and Eldering (Col. 5, lines 9-Col. 6, lines 15) further discloses wherein the content delivery system includes an automated decision system having an associated set of business rules used in conjunction with the audience metric to select content elements for delivery

Claim 49, Gerace (Col. 15, lines 25-45) and Eldering (Col. 5, lines 9-Col. 6, lines 15) further discloses wherein the business rules are configured to maximize the audience.

Claim 50, Gerace (Col. 15, lines 25-45) and Eldering (Col. 5, lines 9-Col. 6, lines 15) further discloses wherein the business rules are configured to maximize audience for selected content elements.

Claim 51, Gerace (Col. 18, lines 1-27) and Eldering (Col. 5, lines 9-Col. 7, lines 55) further discloses wherein the business rule are configured to maximize audience for selected content elements by temporally placing the selected content elements after other content elements having an associated audience metric above a predetermined level

Claim 52, Gerace (Col. 19, lines 37-40) and Eldering (Col. 8, lines 12-23) further discloses wherein the business rule reflects contract-specified monetary values associated with at least a portion of the content elements



Claim 53, Gerace (Col. 19, lines 37-65) and Eldering (Col. 8, lines 12-37) further discloses wherein the business rules are configured to use the monetary values to maximize advertising profits.

Claim 54, Gerace (Col. 6, lines 5-8; Col. 16, lines 30-36 and Col. 22, lines 44-48) and Eldering (Col. 7, lines 40-64) further discloses wherein the audience interaction monitor system captures location information about members of the 1<sup>st</sup> portion of the audience

Claim 55, Gerace (col. 21, lines 29-40) and Eldering (Col. 4, lines 37-50 and Col. 9, lines 13-55) further discloses wherein the audience interaction monitor system captures location information about members of the 1<sup>st</sup> portion of the audience and wherein the content delivery system delivers content to the 2<sup>nd</sup> portions of the audience selectively based on the location information (col. 21, lines 29-40).

Claim 56, Gerace (Col. 19, lines 37-40) and Eldering (Col. 9, lines 4-17) lines 58-65) further discloses wherein at least a portion of the content elements corresponds to a contractual relationship between a broadcasting entity and an advertising entity and wherein the contractual relationship has contractual terms that depend upon the at least one audience metric

Claim 57, Gerace (Col. 19, lines 37-40) and Eldering (Col. 9, lines 4-17) further discloses wherein the contractual terms specify a monetary incentive to the broadcasting entity based at least in part on the at least one audience metric .

Claim 58, Gerace (Col. 19, lines 65-Col. 20, lines 11) and Eldering (Col. 9, lines 4-65) further discloses wherein the contractual terms specify favored lead content elements and provide for the delivery of such favored lead content elements under predefined conditions.

Claim 59, Gerace (Col. 12, lines 65-Col. 13, lines 26 and Col. 15, lines 1-44) and Eldering (Col. 11, lines 29-35) further discloses wherein the contractual terms specify a monetary incentive to the broadcasting entity to refrain from delivering content elements when audience levels are below specified levels

Claim 60, Gerace (Col. 15, lines 1-45 and Col. 18, lines 1-27) and Eldering (Col. 5, lines 47-Col. 6, lines 15) further discloses wherein the contractual terms specify a monetary incentive to the broadcasting entity to selectively deliver predetermined content elements when audience level are above specified level

Claim 61, Gerace (Col. 18, lines 50-Col. 20, lines 11) and Eldering (Col. 5, lines 47-Col. 6, lines 15) further discloses wherein the contractual terms associate a plurality of advertising content elements with the advertising entity and further provide monetary incentive to the broadcasting entity to preferentially broadcast selected one of the advertising content elements based on accumulated empirical

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information on audience level gains and losses associated with such advertising content elements.

Claim 85 is analyzed with respect to claim 41.

2. Claims 62-63, 65-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mao et al (US 6459427) in view of Gerace (US 5848396) and further in view of Stern (US 6486892) and further in view of Eldering et al. (US 6820277).

Claim 62, Mao discloses a method for adjusting media content transmitted to an audience (Col. 3, lines 5-30) comprising:

Simulcasting the media content to the audience (audience selects broadcast) and to a surrogate audience comprising plural persons (many persons select simulcast; Col. 7, lines 5-18);

Mao discloses HTML based webcasting content may be customized based on each consumer' individual profile and viewing time (Col. 4, lines 50-53).

Mao does not clearly disclose "monitoring at least one of response of the surrogate audience to the media content and audience characteristics of the surrogate audience; and adjusting the media content based on the monitoring."

Gerace discloses monitoring at least one aggregate (gather) response of the surrogate audience to the media content and audience characteristics of the

surrogate audience; and adjusting the media content based on the monitoring (Col. 2, lines 45-53; Col. 4, lines 1-36; Col. 5, lines 25-40; Col. 11, lines 45-Col. 12, lines 42). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mao with monitoring at least one aggregate (gather) response of the surrogate audience to the media content and audience characteristics of the surrogate audience; and adjusting the media content based on the monitoring, as taught by Gerace, so to provide to user aggregate information combined in a common screen view or separately in respective screen view with advertisements in accordance with the psychographics profile of user.

Mao in view of Gerace does not clearly disclose "*automatically adjusting, in an identical and uniform manner, the programming and advertising content elements of the narrowcast content for all recipients of the narrowcast content and programming and advertising content elements of the broadcast content for all recipients of the broadcast content in real time based on the monitoring*, thereby ensuring that, for all programming and advertising content elements that are adjustable in response to the aggregate response and audience characteristics, the recipients of the webcast content and the broadcast content receive identical programming and advertising content elements."

Stern discloses the content delivery system being controlled by the audience interaction monitor system and being operative to automatically adjusting, in an identical and uniform manner, the narrowcast content for a plurality of recipients of the narrowcast content and the broadcast content for all recipient of the broadcast

content in realtime (dynamically update user profile so to deliver information up-to-date; Col. 3, lines 45-57; Col. 9, lines 15-Col. 10, lines 14). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mao in view of Gerace with the teaching of dynamically updating user profile so to deliver information up-to-date, as taught by Stern, so to better fine tune user needs by retrieving information or data on topics that user is likely to be interested in, even though the user himself may not know that such topics or information exists (Col. 9, lines 55-63).

Mao in view of Gerace and Stern does not disclose that programming and advertising content elements of both webcast content and of broadcast content are adjustable in an identical manner in response to the audience metric, i.e., for all members of a broadcast audience and all members of a narrowcast audience.

Eldering teaches the subscriber characteristics/data may be associated with individual subscribers or groups of subscribers, i.e., audience metric in terms of demographics, geographic locations, household income, and ethnic group... (Col. 4, lines 33-Col. 5, lines 45) so that programming and advertising content elements can be easily matched in an identical manner in response to the audience metric to individual subscribers or groups of subscribers (Col. 9, lines 13-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Mao in view of Gerace and Stern with the teaching of grouping of subscribers into large groups with similar characteristics, as taught by Eldering, so to provide advertisers an ability to describe their advertisements in terms of target

market demographics and to allow ads to be matched to groups of subscribers in the streaming video environments (see Col. 2, Summary of the invention).

Claim 63, Gerace further discloses wherein the monitoring substantially occurs in real time (Col. 5, lines 8-40);

Claim 65, Mao further discloses wherein the simulcasting correspond to Performing at least one of a traditional broadcast 30 and traditional narrowcast, wherein the media content is distributed to members of the audience via at least one of airwave and cable (Fig. 1); and

Performing at least one of a streaming broadcast 40, 110 and a streaming narrowcast via Internet technology (Fig. 1,2), wherein streaming media content is distributed to a member of the surrogate audience in response to a stream request (Col. 7, lines 27-63).

Claim 66, Gerace further discloses wherein the monitoring corresponds to measuring media content consumption of a surrogate audience member (Col. 5, lines 26-40 and Col. 12, lines 65+).

Claim 67, Gerace further discloses wherein the measuring occurs relative to geographic location of the surrogate audience member (Col. 6, lines 3-8).

Claim 68, Gerace further discloses wherein the measuring occurs relative to demographic location of the surrogate audience member (Col. 6, lines 3-8).

Claim 69, "wherein the measuring occurs relative to domain type of the surrogate audience member" is further met by Gerace because the User is automatically assigned to ISP Internet domain type every time the user log on the Internet through his Internet Service Provider; see Gerace Col. 4, lines 1-5; lines 65-Col. 5, lines 15.

Claim 70, Gerace further discloses wherein the media content is defined in terms of content elements (advertisements), and wherein the adjusting corresponds to assigning a status to a content element based on the monitoring (Col. 15, lines 1-45);

Determining whether to include the content element in an imminent transmission based on the assigned status and reflecting results of the determining in the imminent transmission (Col. 17, lines 10-18 and Col. 18, lines 1-27).

Claim 71, the method claim for increasing audience for media content is analyzed with respect to claim 62.

Claim 72, Gerace (Col. 4, lines 30-47) further discloses deeming of the surrogate audience is representative of the response of the broadcast audience.

Claim 73, Gerace further discloses monitoring current audience characteristics (Col. 5, lines 8-15; Col. 6, lines 58-65+).

Claim 74, Mao further discloses monitoring current audience characteristics, and deeming that the audience characteristics of the surrogate audience are representative of the audience characteristic of the audience (Col. 3, lines 25-29; Col. 4, lines 40-52).

Claim 75, Gerace further discloses wherein the content element corresponds to a programming element, the method further comprising assigning a favored lead status to the programming element based on favorable audience response (Col. 14, lines 65-Col. 15, lines 45), wherein the determining corresponds to resolving to include the programming element in the imminent transmission when audience level is high based on the favored lead status (Col. 19, lines 65-Col. 20, lines 11).

Claim 76, Gerace further discloses wherein the content element corresponds to an advertising element, wherein the monitoring corresponds to detecting an unfavorable audience response (Col. 14, lines 65-Col. 15, lines 45), and wherein the determining corresponds to resolving not to include the advertising element in the imminent transmission based on the unfavorable audience response (Col. 18, lines 1-10).



Claim 77, Gerace further discloses wherein the disfavored advertising element has an associated sponsor, wherein the imminent transmission corresponds to a next available spot for the associated sponsor, and wherein the reflecting corresponds to replacing the disfavored advertising element with an advertising element of the associated sponsor that is not disfavored (Col. 18, lines 1-26).

Claim 78 is analyzed with respect to claim 71.

Claim 79 is analyzed with respect to claim 72.

Claim 80, Gerace further discloses wherein a portion of the advertising element has a condition associated with satisfactory delivery (Col. 12, lines 23-42), and wherein the determining corresponds to detecting whether the condition met (Col. 12, lines 57-Col. 13, lines 33).

Claim 81, Gerace further discloses wherein the delivering corresponds to delivering an advertising element included in the portion only if the condition met (Col. 15, lines 1-45).

Claim 82, Gerace further discloses wherein the delivering corresponds to delivering an advertising element not included in the portion if the condition is not met (Col. 15, lines 1-45).

Claim 83, Gerace further discloses wherein at least one advertising element is a premium advertising element compared to at least one other non-premium advertising element (Col. 19, lines 35-41), wherein the monitoring corresponds to detecting a current audience level, and wherein the determining corresponds to resolving the include the premium advertising element in the imminent transmission in favor of the non-premium advertising element when the current audience level is high (Col. 19, lines 19-32).

Claim 84, Gerace further discloses wherein the monitoring occurs in real time (Col. 5, lines 8-40 and Col. 15, lines 25-45), and wherein the determining is based on audience characteristics proximate in time to the delivery (Col. 4, lines 30-35 and Col. 18, lines 1-15).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Tran whose telephone number is (571) 272-7305. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HT:ht  
05/10/2007

A handwritten signature in black ink, appearing to read 'Hai Tran', is written over two horizontal lines.

**HAI TRAN  
PRIMARY EXAMINER**